

B. RIGBY YOUNG

IBLA 83-18

Decided November 23, 1982

Appeal from decision of Nevada State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. N MC 135653, N MC 135654.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Abandonment

Where a mining claim was located in Dec. 1979, and evidence of assessment work or a proper notice of intention to hold the claim was not filed both in the office where the claim is recorded and in the proper office of BLM on or before Dec. 30, 1980, the claim is properly declared abandoned and void pursuant to 43 U.S.C. § 1744(c) (1976).

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself. A matter of law, it is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute or to afford claimants any relief from the statutory consequences.

APPEARANCES: B. Rigby Young, pro se.

## OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

B. Rigby Young appeals the Nevada State Office, Bureau of Land Management (BLM), decision of June 18, 1981, which declared the unpatented Ted Nos. 1 and 2, N MC 135653 and N MC 135654, abandoned and void because no proof of labor or notice of intention to hold the claims was filed with BLM in 1980, as required by 43 CFR 3833.2.

The claims were located December 7, 1979. They were recorded in Nye County, Nevada, December 12, 1979, and with BLM December 31, 1979. By a letter received by BLM January 8, 1981, appellant stated that he was in Florida and did not have his claim papers with him, but he wanted to give notice that he intended to hold the Ted Nos. 1 and 2 claims. The letter was not in proper form to be accepted as a notice of intention to hold, nor was it filed with BLM within the time period prescribed by statute. Further, it had not been recorded in Nye County, Nevada.

Appellant asserts he sent his notice of intention to hold in 1980 and BLM should have received it by December 30, 1980. The claims are being developed and have not been abandoned. Proofs of labor were filed with BLM December 17, 1981, and August 26, 1982, for assessment years 1981 and 1982, respectively.

[1] Section 314 of the Federal Land Policy and Management Act of 1976, requires that the owner of an unpatented mining claim located after October 21, 1976, shall file a notice of intention to hold the claim or evidence of performance of assessment work on the claim, both in the office where the claim is recorded and with the proper office of BLM, on or before December 30 of the year following the calendar year in which the claim was located, and each year thereafter, under a penalty of a conclusive presumption that the claim has been abandoned if the filing is not timely made in both places. As there is no evidence that appellant made such filings in 1980, BLM correctly declared the claims abandoned and void. Mermaid Mining Co., 65 IBLA 172 (1982); Margaret E. Peterson, 55 IBLA 136 (1981).

[2] The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate without the regulations. See Northwest Citizens for Wilderness Mining Co. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief for the statutory consequences. Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981).

Appellant may wish to consult with BLM about the possibility of relocating these claims.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques  
Administrative Judge

We concur:

C. Randall Grant, Jr.  
Administrative Judge

Franklin D. Arness  
Administrative Judge  
Alternate Member

